

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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|--------------------------|---|------------------------------------|
| LARRY M. WHITTAKER, |) | 3:18-cv-00488-MMD-WGC |
| |) | |
| Plaintiff, |) | <u>MINUTES OF THE COURT</u> |
| vs. |) | |
| |) | September 8, 2020 |
| STATE OF NEVADA, et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: KAREN WALKER REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Before the court is Plaintiff's "Request for Default (sic) Judgment against Defendant Moises Fonseca" (ECF No. 63).

Plaintiff's "Request for Default (sic) Judgment against Defendant Moises Fonseca" (ECF No. 63) is **DENIED** as premature. Pursuant to the U.S. Marshal's return of service (ECF No. 62), Defendant Fonseca was served on August 28, 2020. Therefore, Defendant Fonseca's response to Plaintiff's complaint is due on or before September 17, 2020.

Furthermore, under Fed. R. Civ. P. 55, a default shall be entered where a party "has failed to plead or otherwise defend" and if "that failure is shown by affidavit or otherwise," the clerk is to enter the party's default. Rule 55(a). A precondition to entering default, however, is that the district court must enjoy both subject matter jurisdiction and personal jurisdiction (or in rem/quasi in rem jurisdiction). *Evans v. Larchmont Baptist Church Infant Care Ctr., Inc.*, 956 F.Supp.2d 695, 702 (E.D. VA. 2013; *Wood v. Santa Barbara Chamber of Commerce*, 507 F.Supp. 1128, 1145 (D. Nev. 1980); *Patray v. Northwest Pub. Inc.*, 931 F.Supp. 865, 869 (D.C. Ga. 1996).

As to default judgment pursuant to Fed. R. Civ. P. 55(b), the entry of a default is a prerequisite to the entry of a default judgment upon that default. Rule 55(b)(1); *New York v. Green*, 420 F.2d 99, 104 (2nd Cir. 2005); *Shepard Claims Serv., Inc. v. William Darrah & Assocs.*, 796 F.2d 190, 193 (6th Cir. 1986).

IT IS SO ORDERED.

DEBRA K. KEMPI, CLERK

By: /s/
Deputy Clerk